

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

77-1277

To be argued by
FRANK A. LOPEZ

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1277

UNITED STATES OF AMERICA,

—v.—

BERNARD BERMAN,

Appellee,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK (BRAMWELL, J.)

BRIEF IN BEHALF OF APPELLANT BERNARD BERMAN

HAROLD A. BOGIN

Attorney for Appellant, Bernard Berman

3000 Marcus Avenue

Lake Success, New York 11040

Telephone (516) 328-0074

FRANK A. LOPEZ, Esq.
Of Counsel.

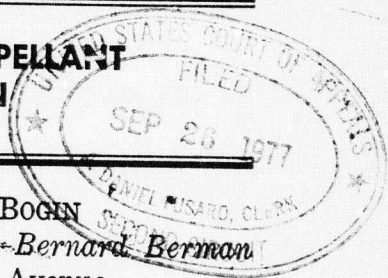




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UNITED STATES OF AMERICA,

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BERNARD BERMAN,

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**BRIEF IN BEHALF OF APPELLANT
BERNARD BERMAN**

Questions Presented for Review

On September 1st, 1976, the defendant-appellant, Bernard Berman,¹ was arraigned on an indictment filed against him on August 26th, 1976, charging him and originally two others, Philip Atlas and Barry Jacobs,² with a narcotic conspiracy, under 21 U.S.C. §§ 846 and 943, and two substantive counts of Importation under 21 U.S.C. §§ 952(a), 960(a)(1) and 18 U.S.C. § 2, and Possession 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. An agreement between the Government and Berman, Atlas and Jacobs ensued resulting in substantial cooperation.

¹ Hereinafter referred to as "Berman."

² Hereinafter referred to as "Jacobs" and "Atlas."

The question presented for review is:

1. Did the Government fairly and adequately fulfill its promise to reflect properly to the sentencing court the extent and effect of Berman's cooperation resulting in an appropriate sentence?
2. Does the failure to keep the promise require vacatur of the guilty plea and dismissal of the indictment or resentencing?

Preliminary Statement

On May 27th, 1977, District Judge Henry Bramwell imposed on Berman a term of imprisonment of three years plus a special parole of five years, and a fine of \$10,000. (A61),³ on his plea of guilty to a federal narcotic conspiracy covered in the first count of an indictment filed August 26th, 1976, in the United States District Court for the Eastern District of New York, Docket No. 76 Cr. 558 (HB), charging him along with co-defendants Atlas and Jacobs in three counts with conspiracy to violate the federal narcotic laws, 21 U.S.C. §§ 846 and 943 (Count One), an importation count under 21 U.S.C. §§ 952(a), 960(a)(1) and 18 U.S.C. § 2 (Count Two), and a possession count in violation of 21 U.S.C. § 841(A)(1) and 18 U.S.C. § 2 (Count Three) (A3-5A).

On October 29th, 1976, Berman pleaded guilty to the first count in the indictment (A12). After sentence, he filed a timely Notice of Appeal on June 3rd, 1977 (A7).

³ References to Appendix on Appeal are in parentheses preceded by letter "A", thusly, "(A...)."

Statement of the Case

Around the first of March, 1976, an air shipment arrived from India at the J.F.K. International Airport in Queens, New York, containing 28 crates of assorted Indian handicrafts and secreting 717 pounds of hashish, a Schedule I controlled substance. Berman, an airfreight forwarder at Kennedy Airport (A55), was handling the incoming shipment in the knowledge that it contained contraband. Atlas and Jacobs made arrangements for its pick-up at the airport and were present as observers when they realized that the shipment was under surveillance. They attempted to drive away from the cargo area, when they were intercepted and arrested by agents of the Drug Enforcement Administration. Berman was subsequently arrested.

At the time of the arrest of Berman, Atlas and Jacobs, the Drug Enforcement Administration was unaware of the identities of these individuals and of their participation in the hashish importation. It was only by chance that the Air India shipment was placed under surveillance. The trio, upon their arrest, decided on cooperation with the Government.

The attorneys for the three defendants immediately commenced negotiations with the United States Attorney in the Eastern District of New York. These negotiations culminated with a promise by the Government that in exchange for the full cooperation of Berman, Atlas and Jacobs, and their pleas of guilty to a fifteen year count in the indictment, the sentencing judge would be advised of the full extent of their cooperation. No specific promises were made as to what the sentence would be. It was also understood that the Government would not prosecute the individuals of any further crimes in which they had participated regarding hashish operation and upon which they were debriefed.

The Government, unaware at the time of the nature and extent of the narcotic operations, was told of a wide-range operation, dating back to December, 1971, and involving ten other importations, not including the 717 pounds of hashish mentioned in the indictment. The ten other importations involved approximately over 2,500 pounds of hashish brought into the United States over a three and one-half year period. The Government was advised, not only of the horizontal and vertical lines of the operations, but was provided with minute details as to finances, overseas operators, and other associates, numbering some 13 persons, connected with the criminal enterprise both in the United States and abroad. Not only were the defendants prepared to testify at any court proceeding, but the Government was assured of their cooperation even after the imposition of sentence. The original three individuals arrested, with the knowledge of the Government, attempted and sought out other cooperating individuals and as a matter of fact, were responsible for the appearance of Larry Friedman in the office of the United States Attorney for the Eastern District of New York, where at the urging of Atlas, Jacobs and Berman, he advised the Government of his own complicity in the criminal scheme even before the prosecution had knowledge of his identity, submitted himself to arrest, indictment and was subsequently sentenced upon his plea of guilty. As a result of the initial cooperation of the trio, Robert Kamen was also arrested and indicted, as well as, Marshall Logue, who also commenced cooperation with the Government and extended it to other areas.

On May 27th, 1977, upon his plea of guilty, Berman appeared for sentence before the Honorable Henry Bramwell, District Judge, for the United States District Court, Eastern District of New York, and received a sentence of three years, plus a special parole term of

five years, and a fine of \$10,000. upon his plea of guilty to the conspiracy count.⁴

ARGUMENT

POINT I

The Government failed to properly and adequately advise the sentencing Court of Berman's cooperation mandating a vacation of the guilty plea and the dismissal of the indictment or a re-sentence consistent with prosecutorial representations

On October 29th, 1976, Berman appeared with his counsel before District Judge Bramwell and retracted a previously entered plea of "Not Guilty" and pleaded guilty to the first count of the indictment charging Conspiracy to Violate the Narcotic Laws of the United States (A12-A15). The Court fully complied with Rule 11 of the F.R.C.P. The Court then inquired if any promises as to sentence had been made and the Government responded (A17-A18):

"THE COURT: Have any promises been made?

"MR. THOMPSON: Yes. The defendant has agreed to enter a plea of guilty to Count 1 and to provide full cooperation. He has been debriefed by DEA agents and will testify before the grand jury and the trial, if requested. *Nothing said by the defendant during the debriefing would be used against him except in the event of perjured testimony.*

⁴ On the argument, in order to avoid repetition, and to best illustrate his claim, we refer to portions of the record reflecting the Government's failure to properly advise the sentencing court of Berman's full cooperation.

The Government in return will advise the Court prior to imposition of sentence of the full nature and extent of the defendant's cooperation and at time of sentence, upon imposition, will move to dismiss the remaining counts of the indictment." (Emphasis supplied.)

On May 27th, 1977, Friedman, Atlas, Jacobs and Berman appeared before District Judge Bramwell. Atlas was sentenced prior to Berman that morning and the statements made in behalf of this defendant were adopted by all defense counsel. Defense attorney Lopez stated to the Court (A79-90):

"MR. LOPEZ: Thank you very much, your Honor.

Your Honor, this is a somewhat different circumstance type of sentence that we have here with Philip Atlas.

In a way, your Honor, it involves the judgment of at least five or six attorneys in this matter as to what was done here. And for that reason I thank the Court for graciously taking the sentence of Philip Atlas first.

What was done here was absolutely wrong. In March of 1976 Atlas and Jacobs were arrested at John F. Kennedy Airport. They were present at a scene where a delivery of a substantial amount of hashish was to take place.

With their physical arrest and without their statements, admittedly the Government had no case against them. But they were held in detention and they began conversations with Drug Enforcement Administration officials. They began to fully cooperate with them.

That same night Mr. Tobin's office and members of the DEA communicated with me, as these young men asked for an attorney at a subsequent time, and asked me to help them on their cooperation.

At that time they had three men under arrest, Berman, Jacobs and Atlas.

I had extensive conversations with Mr. Scotti of the U.S. Attorney's office, and subsequently Mr. Thompson. I mentioned the case to Mr. Puccio, and I also spoke to Mr. Tobin about the case. And I had to make a decision, and it was a difficult decision for me to make, and I had to make it in conjunction with the other attorneys.

I had learned from my client that this is not a one shot deal, that there had been an extensive conspiracy dating back to 1972. And my client asked me for my advice.

The Government had no knowledge of this conspiracy whatsoever, and what had happened in 1972, they knew nothing about it, absolutely nothing, no leads, nothing.

I sat down with the U.S. Attorney's office here in the Eastern District, for whom I have the greatest respect, your Honor. And I made a decision. And I asked Mr. Atlas, and in consultation with Mr. Fusfield and other attorneys, to make full disclosure to the Government of everything that happened in their entire lives with regard to the hashish trade or any other illicit activities.

Now, this was a big decision for me to make because of the fact that I realize that the Government having no leads on any other matters, this might militate against me at sentence.

Well, the attorneys got together and we felt that honesty, frankness and the interests of our clients insofar as rehabilitation, required that we make this type of disclosure to the Government.

The list that you read about transactions in the Freedman sentencing was turned over by me to the Government. The Government never knew anything about this. And we turned it over to them.

THE COURT: Are you saying that but for your actions the Government would never have known this?

MR. LOPEZ: Never have known about it.

THE COURT: You mean it would never have come out through any source?

MR. LOPEZ: No source.

THE COURT: What about the others who were involved?

MR. LOPEZ: They were silent.

If you let me finish, your Honor, you will see what happened.

They didn't know anything about the existence of other people. We told the Government. There are thirteen other people involved. The Government didn't even know their names, who they were.

We did something more, your Honor. We got in touch with attorneys in California. For instance, Larry Freedman, whom your Honor just sentenced, he was out of the picture completely. And we told him and we told the Government we are doing this, we are going to ask other people to come in and make disclosures, because we are going to provide information.

And when Mr. Freedman was told this, and his attorney was told this, and we sat down together, and Mr. Freedman—whom I have a great deal of respect for—learned about this, he said, "Well, I feel I have an obligation since I participated in this matter to make my presence known, my identity known," and he took a plane and came to New York.

On that same day, Atlas and Jacobs were interviewed and debriefed by the DEA. On that same day Mr. Freedman was sitting in the lobby to tell the DEA, 'Here I am.'

Throughout this whole negotiation we urged honesty and frankness because we felt that the Court would take all these factors into consideration.

At no time, your Honor, did Mr. Thompson ever indicate to us what the possibility of sentence would be. I want to be very candid about that. We knew the Government would come forward.

There are other people involved here. There are other investigations being conducted.

As a result of the cooperation of these individuals, for instance, the sentence of Marshal Lobe (phonetic spelling) has been put over before your Honor. He is cooperating with Mr. DePetrus on unrelated matters. So there has been a windfall of disclosure.

And I am in trouble, your Honor. The attorneys—and I take the responsibility—followed my lead. When I said frankness, irrespective of the fact the Government knows nothing about any of these things, they have no information and there is a—

THE COURT: You did what you felt was right.

MR. LOPEZ: Yes, your Honor.

THE COURT: All right.

MR. LOPEZ: And this is the judgment as an attorney I made.

And I felt at the end this, of course, would be considered by the Court and would not militate against me.

I am troubled, and I realize the extent of the traffic here, and I realize also.—

THE COURT: This is not a small operation.

MR. LOPEZ: No, your Honor.

THE COURT: No, sir; by no means.

MR. LOPEZ: By no means.

And the Government would know nothing about it if we weren't frank about the whole story. They knew nothing about it. We wanted them to know the whole story. And other people were brought in only through us, and they knew about it only through us.

I will tell you what I am troubled about and why I need the Court's help.

Your Honor sentenced another co-defendant in this case, Mr. Kamen.

THE COURT: To two years.

MR. LOPEZ: Yes.

Mr. Kamen came in on the eleventh hour. We did all the cooperating and we tried to bring everybody in on this case.

Mr. Freedman also received a two year sentence just a few moments ago.

THE COURT: Yes.

MR. LOPEZ: I feel your Honor did not have all the facts in sentencing him and all the background.

Because what is happening here is this: If we cooperate and we make full and honest and truthful disclosures about things the Government knows nothing about, if we assured them our full cooperation, are we entitled to more consideration than a defendant who has not cooperated with the Government, who came in on the eleventh hour when there was no other course open to him?

These are things that trouble me as an attorney.

THE COURT: Is it your position that you feel you made a deal which the Court is bound by?

MR. LOPEZ: No, your Honor.

What I want to point out is at no time did Mr. Thompson ever tell me what the sentence in this case would be, nor did he make any promise or representation.

THE COURT: You seem to be urging something on the Court. What are you urging on the Court?

MR. LOPEZ: I am urging, quite frankly speaking, your Honor, the kind of sentence that would permit Mr. Atlas to remain on a probationary status, to be given an opportunity.

He realizes, your Honor, the extent of the traffic here. And he also realizes he made a very important decision with his attorney. He was truth-

ful, frank. He came forward. He brought other people into the case. He urged other people to come in and surrender themselves. He did the job, your Honor. And I think that must weigh extensively and heavy as far as the Court is concerned; and I know it will, your Honor.

But what I am urging at this time, your Honor, is Mr. Atlas receive a sentence of probation on this matter, however long it may be. Because I think in the sentencing scheme in this case and in the balancing, that equity seems to call for that kind of decision. This is my humble judgment. Naturally it is your Honor who must make the ultimate determination.

But I did want to speak insofar as Atlas is concerned and the remaining defendants who were to be sentenced yet, and I had to make known the decision in this particular case. And I had to live with them over the past few months because when I sat down with the probation office and Mr. Thompson, I wondered about my judgment, should I have urged my client to give not untruthful, but limited cooperation.

Because as the Probation Department pointed out to me, this is a strange kind of case. We are actually submitting reports to the Court based on the truthful and candid statements made by the defendant, which they knew nothing about it.

And now the Court so rightfully looks at those statements and is, of course, upset and naturally so, by the extent of the conspiracy; and must ask itself, 'Now, what am I to do here.'

But I hope when you look at generally the picture here, you will take into consideration what counsel has done and what we have urged upon our own clients in good faith, and what the Govern-

ment in good faith has received; the continued hope of cooperation; what they certainly will receive from the clients, from Mr. Atlas, and others involved here; the candor with which they had spoken to the Probation Department and the U.S. Attorney's Office.

And specifically, as far as Philip Atlas is concerned, I have seen the presentence report and I am in agreement with it, he is a young man, he is twenty-eight years of age, he is on the verge of marriage. His marriage has not been consummated for the simple reason he is here for sentence, your Honor.

He is in a family business, your Honor, working with his family. He has hopes for the future. he realized profits in this particular matter, which were thrown stupidly away.

He has received help of different kinds in correcting his previous bad habits, your Honor. He has been thoughtful and with regard to this entire matter, Judge Bramwell. And he hopes he can make a new life for himself and start off anew.

And I feel the type of sentence that is a revocable kind of thing, that the Probation Department has a control over this individual, is the kind of sentence that would best fit in insofar as Atlas is concerned. And, of course, your Honor, that type of sentence would also be an encouragement with attorneys who are faced with that kind of problem, does my client tell everything, even things they didn't know about.

That's the kind of judgment I had to make in this case, and that's why I may be so personally involved in the matter, because it's my judgment that is really being called to task. And I felt

I made the right decision, your Honor. But I wanted you to know what problems and what dilemmas I was faced with.

And the people that were named were very close friends. And when they were named, we told the U.S. Attorney's Office we would get in touch with them and tell them what we are doing and ask them and urge them to come in.

And as a result of some of this cooperation, as I now say, Marshal Lobe has now gone off into an independent matter which is now being studied by the U.S. Attorney's office.

So, your Honor, we are at your mercy. And his hopes and aspirations for the future are in your hands, and I hope I was right."

The Court then inquired whether or not the Government wished to make a statement and the following colloquy ensued (A91-A92):

"MR. THOMPSON: Yes, your Honor.

First of all, I would like to confirm that this defendant in fact, both in my opinion personally and as well as the opinions of the Drug Enforcement Agent who conducted his debriefing, was fully candid and absolutely truthful in great detail. And in addition he has remained available and has on several occasions reported in on even very short notice to be available for the purpose of an eleventh hour question or a particular inquiry.

And also, your Honor, the failure of the cooperation to have yet arrived at either Grand Jury or even trial testimony, is exclusively that of the intricate and extensive investigation that the Government is conducting rather than any dilatory or

other untoured conduct on the part of the defendant.

THE COURT: Is it the Government's position that the only way which the information that the Court has before it could have come out is through this particular defendant and his attorney, the only way?

MR. THOMPSON: Judge, I am very reluctant to say 'never' or 'always'. And the word 'only' is very close to the word 'always'.

THE COURT: You had this case and you know what was going on, so I think you have to have a position in view—that this defendant was the only way.

MR. THOMPSON: In view of the number of defendants originally arrested, your Honor, and the circumstances of that arrest, it would have been unlikely that the Government would have been totally unaware of any prior conduct."

The Court then proceeded to sentence Atlas as it did the others based on their own debriefings (A94):

"THE COURT: The Court has taken into consideration the fact that this defendant pleaded guilty.

Shortly after his apprehension this defendant agreed to cooperate fully with the Government agents and revealed that he, along with several others, were involved in the smuggling of substantial amounts of hashish just as his attorney states.

Including the instant offense, the defendant and others were involved in seven operations involving the importing of hashish illegally: On

February 1972, forty-four pounds; September 1972, 330 pounds; November 1972, 400 pounds; December 1972, 450 pounds; January 1974, 330 pounds; January 1975, 800 pounds; March 1976, 717 pounds, which is the instant offense and the one before the Court."

Interestingly enough, defense counsel Fusfield made the following statement to the Court with respect to the sentencing of the defendant (A66-A67):

"MR. FUSFIELD: No. I am not making an excuse for the activity, but I am merely saying, your Honor, that to me it's illogical if the U.S. Government has no information about all these activities in the past, that because of their complete candor or honesty and cooperation from the inception of their arrest, and that the information received by the Government was as a result of their cooperation and knowing, knowing at that point that the Government had no information with regard to any of these activities, they still came forward and they should be rewarded for that.

THE COURT: When this defendant pleaded, was that what you told him?

MR. FUSFIELD: I told him that I believe that consideration would be received by the Court and from the U.S. Attorney's Office if full disclosure of all the activities, not only in regard to their arrest, but all the activities with regard to the hashish importation.

THE COURT: This is a very extensive and involved operation. Just about every defendant claims cooperation, and in fact everyone claimed cooperation.

MR. FUSFIELD: And in fact cooperated.

THE COURT: Yes, not only this one, but everyone claims that, everyone claims that his cooperation—that he has cooperated. Everyone puts himself in a position of having cooperated and helped the Government in this case.

MR. FUSFIELD: You mean all of the three defendants, your Honor, that were arrested? All of the three or all of the thirteen?

THE COURT: Everyone.

Let Mr. Thompson tell you.

Tell us about the cooperation of all of the defendants.

Let him tell you.

MR. THOMPSON: In addition to Mr. Jacobs, Atlas and Berman, Mr. Kamen, Mr. Lobe and Mr. Freedman also have entered pleas of guilty and have furnished initial cooperation in the form of being debriefed by the DEA."

The Court then pointed out to defense counsel on the sentencing that all the defendants who had been arrested as a result of the cooperation of Atlas, Jacobs and Friedman had cooperated. District Judge Bramwell then beckoned to the Assistant United States Attorney to advise Mr. Fusfield and defense counsel of the full and extensive cooperation that other defendants, who had been arrested as a result of the initial cooperation of Berman, Atlas and Jacobs, had given. The Government responded that all cooperated without indication that the original three defendants were in fact responsible for the cooperation of others.

Berman attacks his sentence as unfair in that:

1. The Government made no attempt to minimize Berman's role in the narcotic conspiracy. His complicity was more limited than the other defendants and his background impeccable. He received the highest comparative sentence:

	<i>Imprisonment</i>	<i>Special Parole</i>	<i>Fine</i>
Bernard Berman	3 years	5	\$10,000.
Philip Atlas	2 years	7 *	\$10,000.
Barry Jacobs	18 months	5 *	no fine
Larry Friedman	18 months	5	\$10,000.
Richard Kamen	2 years	5	\$10,000.

2. By advising the Court that all sentenced defendants cooperated, the original and motivating cooperation triggered by Berman, Atlas and Jacobs was diluted by the Government.

3. The Government should have resisted and asked the sentencing Court not to utilize on sentencing the truthful and full cooperation of Berman, relating to his past complicity and other drug importations since this was not what the Government bargained for and was to have been the basis of their representation to the Court for a more lenient sentence. Instead the Court utilized this to impose not a more lenient, but harsher sentence.

4. The Government failed to advise the Court that without the full cooperation triggered by Berman, it was unlikely that the Government would have unearthed the full extent of the organization.

In summary, the dilution by the Government of Berman's cooperation, the use of Berman's debriefing as an instrument to impose a harsher instead of a more

* Sentences were reduced as a result of Rule 35, F.R.C.P. applications, Logue remains unsentenced at this time.

lenient sentence and the failure of the Government to admit that it was only through the cooperation of Berman, Atlas and Jacobs that others were arrested and cooperated, and that in fact, without their assistance the Government would not have learned of the parameters of the conspiracy terminated in an unfair disparity and sentence for Berman. In effect the Government broke its promise to Berman, diluted his cooperation, utilized it against him in his own presentence report and was less than enthusiastic in recommending leniency to the Court.

The law is clear that whatever the promise that the prosecutor gives in order to induce the plea, he must fulfill it. *Santobello v. New York*, 404 U.S. 257 (1971). The Supreme Court indicated in *Santobello, supra*, at p. 262:

“[When] a plea rests in any significant degree on a promise or agreement of the prosecution, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.”

The rule has already been stated in *United States v. Pavia*, 294 F. Supp. 742 (D.D.C. 1969), which held that “if it further appears that the defendant, to his prejudice, performed his part of the agreement while the Government did not, the indictment may be dismissed.”

There is no question here that the Government made a firm promise to Berman and thereby falls within the guidelines of *United States v. Battle*, 467 F.2d 569 (5th Cir. 1972). This Court has even permitted the vacatur of a plea-based conviction where there was no clear promise if a layman might have misunderstood and, therefore, have been misled. *United States v. Lester*, 247 F.2d 496 (2d Cir. 1957).

On the Berman record it is obvious that the Government does not deny a plea bargain and a promise as an

inducement for a guilty plea. Furthermore, Berman gave up his right to a jury trial and all other collateral rights in exchange for the Government's promise to reflect properly his cooperation. Berman supplied evidence about himself that the Government promised would not be used against him. In fact, the Government supplied this information after learning it from Berman to the Probation Department who inserted it in a presentence report which was the basis for the sentencing court's imposition of sentence. This case is not unlike *People v. Eck*, 197 N.W. 2d 289 (Mich. 1972), where precisely the prosecutor promised that statements would not be used against him but were included in the presentence report. The fact of a broken promise was found in *United States v. Brown*, 500 F.2d 375 (4th Cir. 1974), where the Court failed to argue for his sentence recommendation unenthusiastically. In the *Brown* case, the Court concluded that a bargained-for sentence recommendation included an "implied promise" to support the recommendation with some degree of advocacy. *United States v. Ewing*, 480 F.2d 1141 (5th Cir. 1973); *Braxton v. United States*, 328 A. 2d 385 (D.C. 1974).

The prejudice that has ensued is that while a number of constitutional rights can be restored to Berman he has revealed to the prosecutorial authorities information about himself which means that the original limited issues of the case cannot be tried since the Government now has information regarding Berman and prior misdeeds that makes a fair trial a fantasy.

CONCLUSION

For all the above-stated reasons, this Court should set aside the judgment, vacate the plea of guilty and dismiss the indictment, and in the alternative, vacate the judgment and order a resentence of Berman, together with such other and further relief as may be just and proper.

Respectfully submitted,

HAROLD A. BOGIN
Attorney for Appellant, Bernard Berman
 3000 Marcus Avenue
 Lake Success, New York 11040
 Telephone (516) 328-0074

FRANK A. LOPEZ, Esq.
Of Counsel.

United States Court of Appeals
FOR THE SECOND CIRCUIT

No. 77-1277

UNITED STATES OF AMERICA
APPELLEE

v.
BERNARD BERMAN,
DEFENDANT-APPELLANT

AFFIDAVIT OF SERVICE BY MAIL

ALBERT SENCHE, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 914 BROOKLYN AVE
BROOKLYN, N.Y.

That on the 26th day of SEPTEMBER, 1977, deponent served the within BRIEF AND APPENDIX FOR APPELLANT upon DAVID TRAGER, UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF NEW YORK
225 CADMAN PLAZA, BROOKLYN, N.Y. 11201

Attorney(s) for the APPELLEE in the action, the address designated by said attorney(s) for the purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Post Office department within the State of New York.

Albert Senche

Sworn to before me,

This 26th day of SEPTEMBER 1977

Edward A. Quimby

EDWARD A. QUIMBY
Notary Public, State of New York
No. 24-3183500
Qualified in Kings County
Commission Expires March 30, 1979



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